

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 13490 of 1994****For Approval and Signature:****HON'BLE MR JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

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GSRTC - Petitioner(s)
Versus
BABULAL NAVALRAM - Respondent(s)

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Appearance :

MR HARDIK C RAWAL for Petitioner No(s).: 1.

RULE SERVED for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 02/08/2005

ORAL JUDGMENT

1.0 The petitioner Corporation has challenged the award dated 04.10.1993 passed by the Labour Court, Rajkot, in

Reference (LCR) No. 619 of 1992, whereby the petitioner was directed to reinstate the respondent to his original post with continuity of service and 50 % back wages.

2.0 The respondent herein was employed as a Driver by the petitioner Corporation. On 22.05.1991, while the respondent was on duty, he had permitted the Conductor of the bus to drive the bus. However, the Conductor lost control of the vehicle resulting into an accident thereby causing damage to the bus and injuries to the passengers traveling in the said bus. Therefore, departmental inquiry was held against the respondent. After issuing second show cause notice, the respondent workman was dismissed from service by order dated 20.04.1992.

2.1 Being aggrieved by the said order, the petitioner raised a dispute before the Labour Court by way of a reference. The Labour Court, after hearing the parties and after considering the evidence placed on record, passed the impugned award. Hence, this petition.

3.0 Mr. H C Raval learned advocate for the petitioner has contended that the Labour Court ought not to have granted reinstatement to the respondent since the charges

leveled against him were proved in the departmental inquiry, and, more particularly, when the workman himself had admitted the guilt. He has submitted that the Labour Court has committed an error while exercising powers under Section 11(A) of the Industrial Disputes Act, 1947.

3.1 Mr. Raval has further submitted that the Labour Court, while substituting the order of dismissal passed by the petitioner Corporation, has not imposed any penalty on the workman. He has submitted that the Labour Court has awarded 50 % back wages to the respondent only on the ground of benefit of doubt and without assigning any reasons. He has, therefore, submitted that the impugned award of the Labour Court is illegal and perverse and deserves to be quashed and set aside.

4.0 I have heard learned counsel for the petitioner and perused the documents placed on record. Though served none appears on behalf of the respondent workman. While admitting the matter 19.12.1994, this Court had stayed the operation of the impugned award of the Labour Court.

5.0 The contention raised by Mr. Raval regarding the exercise of powers under Section 11(A) of the Industrial

Disputes Act, 1947 is required to be accepted in view of the fact that the Labour Court has not imposed any penalty while substituting the order of dismissal passed by the petitioner Corporation. In my opinion, the Labour Court ought to have imposed some penalty while substituting the order of dismissal.

6.0 So far as the contention with regard to back wages is concerned, it is required to be noted that the Labour Court has not given any cogent reasons as to on what basis it has awarded 50 % back wages to the respondent. It appears that the main reason which has weighed with the Labour Court while awarding back wages was the duration of service rendered by the workman to the petitioner.

6.1 Moreover, in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J., pg.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

6.2 In the case of General Manager, Haryana Roadways v.

Rudhan Singh reported in J.T. 2005(6) S.C., pg.137, it has been held that an order for payment of back wages should not be passed in a mechanical manner, but, a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua awarding 50 % back wages to the respondent workman is required to be quashed and set aside.

7.0 In above view of the matter, this petition is partly allowed. The impugned award of the Labour Court qua granting the respondent workman reinstatement to his original post with continuity of service is confirmed; and, the direction qua granting 50 % back wages is quashed and set aside, and, instead, a penalty of stoppage of ONE increment with future effect is imposed on the respondent. Rule is made absolute to the aforesaid extent with no order as to costs.

(K. S. JHAVERI, J.)

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